



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Aging and Disability Services Administration

☒ **Permanent Rule**
☐ **Emergency Rule**

Effective date of rule:

Permanent Rules

- ☐ 31 days after filing.
☒ Other (specify) 10-1-06 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- ☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: Residential Care Services division recently assumed responsibility for conducting investigations of entities and alleged perpetrators where allegations of abandonment, abuse, neglect, and financial exploitation in certified supported living programs are reported. Portions of WAC 388-71-0100 through 388-71-1280 (Adult Protective Services) and WAC 388-97-077 (Resident Protection Program) are being incorporated without material change into Chapter 388-101 to reflect this change in responsibility. **(Continued on Attachment A)**

Citation of existing rules affected by this order:

Repealed: WAC 388-101-1100, -1105, -1110, -1115, -1120, -1125, -1130, -1135, -1140, and -1145
Amended: WAC 388-101-2300
Suspended: None

Statutory authority for adoption: RCW 71A.12.030 and RCW 71A.12.080

Other authority : Chapter 71A.12 RCW

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-11-152 on May 23, 2006.

Describe any changes other than editing from proposed to adopted version:

(See Attachment B.)

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name:

Address:

phone ()

fax ()

e-mail



"Added by DSHS after filing"

ADOPTION

PERMANENT

EMERGENCY

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EFFECTIVE DATE:

10/1/06

Date adopted:

8-23-06

NAME (TYPE OR PRINT)

Andy Fernando

SIGNATURE

TITLE

Manager, Rules and Policies Assistance Unit

CODE REVISER USE ONLY

CODE REVISER'S OFFICE STATE OF WASHINGTON FILED	
AUG 29 2006	
TIME <u>4:19</u>	AM <input checked="" type="radio"/> PM <input type="radio"/>
WSR <u>06-18-038</u>	

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted in the agency's own initiative:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>10</u>	Amended	<u>1</u>	Repealed	<u>10</u>
-----	-----------	---------	----------	----------	-----------

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>10</u>	Amended	<u>1</u>	Repealed	<u>10</u>

Attachment A
CR-103 – Abuse and Neglect Reporting; Client Transportation
For Rules Proposed as WSR 06-11-152

Purpose: (Continued.)

No substantive changes are being made to any existing requirements including those governing: 1) vulnerable adult abuse and neglect reporting, 2) abuse and neglect investigations and notification, and 3) due process and appeal rights.

The proposed rules also amend WAC 388-101-2300 to clarify that vehicles used to transport clients must be insured as required by existing state law and that providers, employees and subcontractors who transport clients must have a valid driver's license. The proposed rules incorporate existing state law by reference (Chapters 46.20, 46.29, and 46.30 RCW) and do not impose new requirements.

These proposed rules only address some of the elements identified in preproposal statement of inquiry WSR 05-07-132. The department plans to propose additional changes to Chapter 388-101 WAC under WSR 05-07-132.

The proposed WAC amendments reflect an internal administration change of responsibility for conducting investigations of alleged abandonment, abuse, neglect, and financial exploitation in certified supported living programs. Chapter 388-101 WAC needs to indicate that ADSA-Adult Protective Services is no longer conducting certain investigations.

A recent audit by the state auditor's office stated that the department should establish adequate internal controls to ensure that vehicles used to transport clients of supported living services are properly insured. The audit recommended that the department clearly define its expectations for properly insured vehicles used to transport clients.

Attachment B
CR-103 – Abuse and Neglect Reporting; Client Transportation
For Rules Proposed as WSR 06-11-152

NEW SECTION

WAC 388-101-1101 Abuse and neglect reporting requirements.

(1) All administrators, owners, and staff ~~and volunteers~~ are mandated reporters and must report instances of suspected abandonment, abuse, neglect, or financial exploitation of vulnerable adults as defined in, and accordance with chapter 74.34 RCW.

NEW SECTION

WAC 388-101-1106 Investigation of mandated reports.

(3) If, after completing an investigation under this chapter, the department concludes that it is more likely than not that the alleged perpetrator ~~a specific individual~~ abandoned, abused, neglected, or financially exploited a client, the department will make an initial finding against the alleged perpetrator individual.

NEW SECTION

WAC 388-101-1111 Notice of an initial finding.

(1) The department will notify the alleged perpetrator individual in writing within ten working days of making an initial finding of abandonment, abuse, neglect or financial exploitation of a client. The written notice will not include the identities of the alleged victim, reporter and witnesses.

(2) The department shall make a reasonable, good faith effort to determine the last known address of the alleged perpetrator individual.

NEW SECTION

WAC 388-101-1116 Reporting initial findings.

(1) In a manner consistent with confidentiality requirements concerning the client, witnesses, and reporter, the department may provide notification of an initial finding to:

- (a) Other divisions within the department;
- (b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator individual is associated as an employee, volunteer or contractor;
- (c) Law enforcement; and
- (d) Other investigative authorities consistent with chapter 74.34 RCW.

NEW SECTION

WAC 388-101-1121 Disputing an initial finding.

(1) An individual alleged perpetrator of ~~to have abandoned~~, abused, neglected, or financially exploitationed of a client may request an administrative hearing to challenge an initial finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the alleged perpetrator's individual's written request for a hearing within thirty calendar days of the date the individual was served with notice of the initial finding.

(4) The written request for a hearing must include:

(a) The full legal name, current address and phone number of the alleged perpetrator individual;

(b) A brief explanation of why the alleged perpetrator individual disagrees with the initial finding;

(c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator individual, including a foreign or sign language interpreter or any accommodation for a disability; and

(d) The alleged perpetrator's individual's signature.

NEW SECTION

WAC 388-101-1126 Disclosure of investigative and finding information.

(1) The alleged perpetrator individual may only use confidential information provided by the department as needed to challenge initial findings through the appeal process.

NEW SECTION

WAC 388-101-1131 Hearing procedures to dispute an initial finding.

(2) The administrative law judge shall determine whether a preponderance of the evidence supports the initial finding that the alleged perpetrator individual abandoned, abused, neglected, or financially exploited a vulnerable adult, and shall issue an initial order.

NEW SECTION

WAC 388-101-1136 Appeal of the administrative law judge's initial order on a finding.

(1) If the alleged perpetrator individual or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW and chapter 388-02 WAC.

NEW SECTION

WAC 388-101-1141 Finalizing an initial finding.

(1) An initial finding becomes a final finding when:

(a) The department gives the alleged perpetrator individual notice of the initial finding pursuant to WAC 388-101-1110 and the alleged perpetrator individual does not request an administrative hearing;

(b) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding and the alleged perpetrator individual fails to appeal the initial order to the department's board of appeals; or

(c) The board of appeals issues a final order upholding the finding.

(2) The final finding is permanent and will not be removed from the department's records unless:

(a) It is rescinded following judicial review; or

(b) The department decides to remove a single finding of neglect from its records based upon a written petition by the alleged perpetrator individual provided that at least one calendar year has passed since the finding was finalized and recorded.

NEW SECTION

WAC 388-101-1146 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect and financial exploitation within ten working days to the following:

(1) The perpetrator individual;

(2) The service provider that was associated with the perpetrator individual during the time of the incident;

(3) The service provider that is currently associated with the perpetrator individual, if known;

AMENDATORY SECTION

WAC 388-101-2300 Client transportation.

(3) A vehicle that the service provider uses to transport clients must be:

(a) In safe operating condition; and

(b) Insured as required by chapters 46.29 and 46.30 RCW.

~~(43) Service providers, employees, and subcontractors persons associated with the provider, who transport clients, must:~~

~~(a) Have a valid driver's license as required by chapter 46.20 RCW; and~~

~~(b) Only use vehicles that are:~~

~~(i) In safe operating condition; and~~

~~(ii) Insured as required by chapters 46.29 and 46.30 RCW.~~

NEW SECTION

WAC 388-101-1101 Abuse and neglect reporting requirements.

(1) All administrators, owners, and staff are mandated reporters and must report instances of suspected abandonment, abuse, neglect, or financial exploitation of vulnerable adults as defined in, and accordance with chapter 74.34 RCW.

(2) Reports must be made to the centralized toll free telephone number for reporting abandonment, abuse, neglect or financial exploitation of vulnerable adults, provided by the department.

(3) Reports must be made to law enforcement agencies, as required under chapter 74.34 RCW.

(4) Service providers must have policies and procedures complying with state law that specify reporting requirements for client abandonment, abuse, neglect, and financial exploitation.

(5) Each administrator, owner, staff person, and volunteer must read and sign the policy about reporting requirements. The service provider must retain the signed policy for staff and volunteers.

NEW SECTION

WAC 388-101-1106 Investigation of mandated reports. (1) The department will determine whether a report of client abandonment, abuse, neglect, or financial exploitation needs to be investigated, in accordance with established procedures.

(2) The department investigation will include an investigation of allegations about one or more of the following:

- (a) A service provider;
- (b) Anyone associated with a service provider; or
- (c) A client receiving services under this chapter.

(3) If, after completing an investigation under this chapter, the department concludes that it is more likely than not that the alleged perpetrator abandoned, abused, neglected, or financially exploited a client, the department will make an initial finding against the perpetrator.

NEW SECTION

WAC 388-101-1111 Notice of an initial finding. (1) The department will notify the alleged perpetrator in writing within

ten working days of making an initial finding of abandonment, abuse, neglect or financial exploitation of a client. The written notice will not include the identities of the alleged victim, reporter and witnesses.

(2) The department shall make a reasonable, good faith effort to determine the last-known address of the alleged perpetrator.

(3) The time frame for notification can be extended beyond ten working days to include the time needed to translate the notification letter or make provisions for the safety of the alleged victim.

(4) Notice of the initial finding will be served as provided in chapter 388-02 WAC.

NEW SECTION

WAC 388-101-1116 Reporting initial findings. (1) In a manner consistent with confidentiality requirements concerning the client, witnesses, and reporter, the department may provide notification of an initial finding to:

- (a) Other divisions within the department;
- (b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator is associated as an employee, volunteer or contractor;
- (c) Law enforcement; and
- (d) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as an initial finding.

NEW SECTION

WAC 388-101-1121 Disputing an initial finding. (1) An alleged perpetrator of abandonment, abuse, neglect, or financial exploitation of a client may request an administrative hearing to challenge an initial finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the alleged perpetrator's written request for a hearing within thirty calendar days of the date the individual was served with notice of the initial finding.

(4) The written request for a hearing must include:

- (a) The full legal name, current address and phone number of the alleged perpetrator;
- (b) A brief explanation of why the alleged perpetrator disagrees with the initial finding;
- (c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator, including

a foreign or sign language interpreter or any accommodation for a disability; and

(d) The alleged perpetrator's signature.

NEW SECTION

WAC 388-101-1126 Disclosure of investigative and finding information. (1) The alleged perpetrator may only use confidential information provided by the department as needed to challenge initial findings through the appeal process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the client will be redacted from documents unless otherwise ordered by the administrative law judge consistent with chapter 74.34 RCW and other applicable state and federal laws.

NEW SECTION

WAC 388-101-1131 Hearing procedures to dispute an initial finding. (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding an initial finding. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

(2) The administrative law judge shall determine whether a preponderance of the evidence supports the initial finding that the alleged perpetrator abandoned, abused, neglected, or financially exploited a vulnerable adult, and shall issue an initial order.

NEW SECTION

WAC 388-101-1136 Appeal of the administrative law judge's initial order on a finding. (1) If the alleged perpetrator or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not modify the finding in the department's records until a final hearing decision is issued.

NEW SECTION

WAC 388-101-1141 Finalizing an initial finding. (1) An initial finding becomes a final finding when:

(a) The department gives the alleged perpetrator notice of the initial finding pursuant to WAC 388-101-1110 and the alleged perpetrator does not request an administrative hearing;

(b) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding and the alleged perpetrator fails to appeal the initial order to the department's board of appeals; or

(c) The board of appeals issues a final order upholding the finding.

(2) The final finding is permanent and will not be removed from the department's records unless:

(a) It is rescinded following judicial review; or

(b) The department decides to remove a single finding of neglect from its records based upon a written petition by the alleged perpetrator provided that at least one calendar year has passed since the finding was finalized and recorded.

NEW SECTION

WAC 388-101-1146 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect and financial exploitation within ten working days to the following:

(1) The perpetrator;

(2) The service provider that was associated with the perpetrator during the time of the incident;

(3) The service provider that is currently associated with the perpetrator, if known;

(4) The appropriate licensing authority; and

(5) The department's registry of findings of abandonment, abuse, neglect and financial exploitation. The findings may be disclosed to the public upon request.

AMENDATORY SECTION (Amending WSR Statutory Authority: RCW 71A.12.030, 71A.12.080, and chapter 71A.12 RCW. 04-23-070, filed 2/15/05, effective 2/15/05)

WAC 388-101-2300 ((How must the service provider be involved with a client's transportation needs?)) Client transportation. (1) The service provider must provide transportation or ensure that clients have a way to get to:

(a) Emergency medical care;

- (b) Medical appointments; and
- (c) Therapies.
- (2) Within available resources, the service provider must provide necessary assistance with transportation to and from:
 - (a) Work, school or other publicly funded services;
 - (b) Leisure or recreation activities;
 - (c) Client-requested activities; and
 - (d) ISP/POC- or IISP-related activities.
- (3) A vehicle that the service provider uses to transport clients must be:
 - (a) In safe operating condition; and
 - (b) ~~((Properly))~~ Insured ~~((for its usage))~~ as required by chapters 46.29 and 46.30 RCW.
- (4) Service providers, employees, and subcontractors who transport clients must have a valid driver's license as required by chapter 46.20 RCW.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101-1100	Abuse and neglect reporting requirements.
WAC 388-101-1105	Investigation of mandated reports.
WAC 388-101-1110	Notice of an initial finding.
WAC 388-101-1115	Reporting initial findings.
WAC 388-101-1120	Disputing an initial finding.
WAC 388-101-1125	Disclosure of investigative and finding information.
WAC 388-101-1130	Hearing procedures to dispute an initial finding.
WAC 388-101-1135	Appeal of the administrative law judge's initial order on a finding.
WAC 388-101-1140	Finalizing an initial finding.
WAC 388-101-1145	Reporting final findings.